

of a work-related accident. Moreover, they contend claimant offered Mr. Miller \$5,000 as his share of a workers compensation claim.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the undersigned Board Member makes the followings findings and conclusions:

Claimant, who worked for respondent for approximately two and one-half weeks, alleges he injured his neck on June 1, 2007, while installing sheetrock for respondent. Claimant described the accident, as follows:

I was up in the bar joists and there was a vent going across the top and it's only about that far from -- well, probably about 20 inches off of the scaffolding and I kept jamming my neck, my head.

We were putting firewall up behind the wiring and plumbing and electrical and everything. It goes up against the sheetrock all the way up to the ceiling to prevent fire from going from one end to the next.

I kept jamming [my neck], you know, because it's a real tight space and you're down in there and when you move, you know, occasionally you jam your neck.¹

At the preliminary hearing, claimant also testified he could not walk after about an hour and a half after arriving home from work. And when he stood up from a couch his legs would not work properly and he laid on a coffee table for a minute. Claimant allegedly remained on the couch until the next morning when Ralph J. Miller, one of respondent's co-owners, arrived at claimant's house to take him to work. According to claimant, at that time he told Mr. Miller something had snapped the night before and he could not walk.

On June 5, 2007, claimant went to the Olathe Medical Center, where he was given an MRI and admitted for surgery. On that date, claimant saw Dr. Paul L. O'Boynick, who diagnosed a large herniated disk at C5-6. On June 6, 2007, claimant underwent surgery for a herniated cervical disk.

Some of the controversy in this claim arises from the medical history Dr. O'Boynick took from claimant on June 5, 2007. The doctor noted, in part:

¹ P.H. Trans. at 5, 6.

This 42-year-old white male states that last Friday, 6/1/07, he got up off his couch and fell forward. He states that since that time he has had difficulty with his gait. He stumbles, trips and falls and walks in a slow gait. He denies any arm or leg symptoms other than some numbness and tingling in the ulnar side of both of his hands. He states at times when he “flops down on his couch” he gets electrical shocks through his arms and legs. He denies any incontinence of his bowel or bladder. He states that he has not eaten since lunchtime at 6/1/07 and he states it was 2-3 days prior to that before he had eaten. . . .²

The preliminary hearing record also contains notes compiled by Dr. Scott A. Nitzel of the Olathe Medical Center. The history recorded by Dr. Nitzel is questionable as it was not provided by claimant as he was heavily sedated. Instead, the doctor obtained the history from claimant’s mother and medical records. Dr. Nitzel’s history indicates claimant had an onset of difficulty walking on June 1, 2007, and that he tripped and fell over a coffee table.

But claimant contends the histories of injury as set forth in those documents are, at best, incomplete. Claimant points out that other information in those documents is completely false. He contends he told Dr. O’Boynick about being hurt at work on June 1, 2007, and about experiencing “jolts” since about 2:00 p.m. on that date. Moreover, claimant contends he told the doctor his legs were not working when he arose from the couch.

At the preliminary hearing, claimant presented the September 26, 2007, medical report prepared by Dr. James A. Stuckmeyer. The doctor examined claimant at his attorney’s request in late September 2007 and concluded that claimant’s history of jamming his neck into a beam was consistent with herniating the C5-6 disk. Although Dr. Stuckmeyer noted the history of the coffee table incident in his report, the doctor did not specifically address that incident in his final opinion. The doctor wrote, in part:

This injury obviously caused significant compression to the cervical cord leading to the development of these symptoms. I do feel that based on the patient’s history the mechanism of the accident on June 1, 2007 as described by the patient is consistent with the type of injury suffered by the patient. It is my opinion based on the patient[']s history the accident of June 1, 2007 was the direct and proximate cause of the work-related injury to his cervical spine necessitating the above-mentioned operative procedure. I do believe that the treatment rendered was reasonable and appropriate to relieve the employee of the effects of his injury.³

² *Id.*, Resp. Ex. A.

³ *Id.*, Cl. Ex. 1.

Ralph J. Miller also testified at the preliminary hearing. According to Mr. Miller, claimant did not report injuring his neck at work on June 1, 2007, during their ride home that day. Mr. Miller did, however, acknowledge that claimant had mentioned his neck was stiff that day. Mr. Miller further testified he saw claimant the next day and claimant did not relate his neck problem to work at that time. But more significantly, Mr. Miller related how he saw claimant after the neck surgery and claimant inquired if Mr. Miller would be interested in receiving \$5,000 if they filed a claim for \$35,000 or so. Mr. Miller testified, in part:

. . . He called me, I don't know, I think it was probably after he got back home. He said he was broke. He really needed some money and he had some tools he wanted to sell and asked if I'd be interested in them. So I thought, well, I can use tools all the time.

He had a saw zaw *[sic]*. So I went over there and bought a saw zaw *[sic]* from him, \$20, and at that time he asked me about work comp and the claim, how it worked, if I got charged money or not. And I said, well, it's a factor and it will affect me in the future. It won't now but in the future it will affect me.

He then asked me, he says, "Would you be interested if I give you \$5,000 we file a claim for \$35,000 or so?" And I said, "You need to get a lawyer." That was my last contact [with claimant].⁴

Claimant denied offering Mr. Miller money to falsify a workers compensation claim. But claimant admits he may have called Mr. Miller about needing money and selling some tools.

Judge Howard had the opportunity to observe both claimant and Mr. Miller testify and, therefore, assess their credibility. The Judge found claimant was not credible and that he failed to prove he injured his neck at work. That finding is further buttressed by claimant's past conviction for a crime involving dishonesty.⁵ Considering the record compiled to date, this Board Member likewise finds claimant has failed to prove he injured his neck working for respondent. Consequently, claimant's request for preliminary hearing benefits should be denied.

⁴ P.H. Trans. at 29, 30.

⁵ The record mentions other convictions. But those convictions are not relevant as they do not involve dishonesty or false statement or otherwise reflect upon truth or veracity.

By statute, preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.⁶ Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2006 Supp. 44-551(i)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

WHEREFORE, the undersigned Board Member affirms the October 11, 2007, Order.

IT IS SO ORDERED.

Dated this ____ day of December, 2007.

BOARD MEMBER

c: Michael H. Stang, Attorney for Claimant
Jodi J. Fox, Attorney for Respondent and its Insurance Carrier
Steven J. Howard, Administrative Law Judge

⁶ K.S.A. 44-534a.